

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

OLDEN MEDLEY,

Plaintiff,

Case No. 07-15046

Hon. Marianne O. Battani

v.

Magistrate Judge R. Steven Whalen

CITY OF DETROIT,  
et al.,

Defendants.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Olden Medley filed this action, claiming defendants, City of Detroit, Detroit Police Department, and individual police officers violated his constitutional rights when they arrested and incarcerated him. The case was referred to Magistrate Judge Paul J. Komives for all pretrial proceedings. The City of Detroit subsequently filed a Motion to Dismiss.

In a Report and Recommendation ("R&R") dated August 12, 2008, Magistrate Judge Komives recommended that the motion be granted in part and denied in part. See Doc. No. 16. Under 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2), a party seeking review of a magistrate judge's report and recommendation is required to act within ten days of service of the R&R. A party's failure to file objections waives any further right of appeal.

Although neither party filed an objection, Plaintiff has requested additional time in which to respond to the Motion to Dismiss. The scheduling order required Plaintiff's response to be filed on April 24, 2008. Although his response was received on April 25,

2008, the Magistrate Judge found it timely and considered it in assessing the merits of Defendants' motion. Further response to the motion is not necessary. Accordingly, Plaintiff's request is **DENIED**.

The Court has carefully reviewed the Report and Recommendation. That recommendation is supported by the facts of this case and governing case law, and the Court **ADOPTS** the Report and Recommendation. Accordingly, the Court **DENIES** the request to dismiss Plaintiff's claims of false arrest, excessive force, and unlawful incarceration. The Court **DISMISSES** the City of Detroit Police Department as it is not an entity amenable to suit. It further **DISMISSES** Plaintiff's due process claim, which is barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). The Court agrees that Plaintiff's claim of municipal liability is deficient in that the complaint does not allege a specific unconstitutional practice or policy of the City of Detroit that resulted in his injuries. Because the Court also agrees that prior to discovery, Plaintiff cannot be expected to do so, the claim is **DISMISSED** without prejudice. Plaintiff may amend his complaint should discovery provide support for his contentions about the policies and customs of the City of Detroit.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: September 16, 2008

## CERTIFICATE OF SERVICE

Copies of this Order were mailed and/or e-filed to Plaintiff and counsel of record on this date.

s/Bernadette M. Thebolt  
Deputy Clerk